

Cite as 2023 Ark. App. 203
ARKANSAS COURT OF APPEALS
DIVISION II
No. CV-22-758

IESHA KNOX

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES AND MINOR
CHILD

APPELLEES

Opinion Delivered April 12, 2023

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT, EIGHTH
DIVISION
[NO. 60JV-21-509]

HONORABLE TJUANA C. BYRD,
JUDGE

AFFIRMED

RAYMOND R. ABRAMSON, Judge

Iesha Knox appeals the Pulaski County Circuit Court order terminating her parental rights to her minor child (MC). On appeal, Knox argues that the circuit court erred by finding it was in MC's best interest to terminate her parental rights. We affirm.

On August 27, 2021, the Arkansas Department of Human Services (DHS) filed a petition for emergency custody and dependency-neglect concerning MC. In the affidavit attached to the petition, DHS alleged that MC was born on August 21 and tested positive for opioids and cocaine at birth. DHS further stated that it could not locate Knox following her discharge from the hospital or find a relative to accept placement of the child. On that same day, the court entered an ex parte order for emergency custody.

On September 2, the court found probable cause for the emergency custody. In the order, the court noted that Knox did not appear for the hearing and had not been in contact with DHS.

On October 12, the court adjudicated MC dependent-neglected based on neglect and parental unfitness due to Knox's drug usage. The court found that MC had tested positive for cocaine at birth and that Knox had tested positive for cocaine and opiates. The court noted that Knox did not appear for the adjudication hearing and had not contacted DHS or completed an affidavit of indigency.

On February 15, 2022, the court held a review hearing, and Knox again did not appear. The court found that Knox had not had any contact with DHS and had not visited MC. The court changed the goal of the case to adoption.

On April 21, DHS petitioned to terminate Knox's parental rights, alleging the abandonment, subsequent-factors, and aggravated-circumstances grounds. DHS further asserted that it was in MC's best interest to terminate Knox's parental rights. On May 24, the court appointed an attorney to represent Knox.

The court held a termination hearing on August 2. At the hearing, Elizabeth Oldridge, an adoption specialist, testified that MC is likely to be adopted if Knox's parental rights are terminated. She noted that there are about 279 possible adoptive homes for MC and that she is unaware of any barriers to MC's adoption.

Knox testified at the hearing, and she denied using illegal substances during her pregnancy. She stated that she "was touching it, but [she] was not using it." She explained

that she last used an illegal substance, marijuana, about four years ago. She testified that she “tried to obtain visitation,” but she did not have a safe environment for MC. She noted that she moved from residence to residence and that she was “run[ning] from the police” due to an arrest warrant. She testified that she sold drugs with MC’s father and that he had been murdered. She specified that she last saw MC on August 23, 2021.

Knox further explained that she had been incarcerated since January 2022 for theft by receiving, robbery, and a probation revocation and that she is serving a five-year sentence. However, she anticipated that she would be released in eight and a half months. She testified that she has other children but that they are living with her family. She further stated that she voluntarily “terminated [her] own rights” to one child, who is living with the father.

Knox stated that her aunt, Bertha Hudson, is taking classes and is in contact with DHS about obtaining custody of MC. She estimated that Hudson is sixty-two or sixty-three years old. She explained that DHS had completed a home study on Hudson and that Hudson had also completed paperwork at the DHS office.

Treva Crockett, the family-service worker, testified that she visited Knox in jail in June 2022 to inform Knox of the termination hearing and to ask about Hudson’s being MC’s guardian. Crockett stated that Knox approved of Hudson; however, Crockett testified that DHS determined Hudson is too elderly to care for MC due to his infancy. She stated that Hudson has lung and breathing problems and is “on medication for her bones.” She also stated that DHS had concerns with Hudson’s living situation. Crockett did not know

whether “the resource department” had evaluated Hudson on whether she “would be appropriate for placement or could be opened as a foster home.”

Crockett testified that Knox has failed to address the issues causing MC’s removal and that she did not participate in the case plan. She stated that it is in MC’s best interest to terminate Knox’s rights because she had made no attempt to bond with MC. Crockett noted that MC had been placed in a foster home.

Following the hearing, the court entered an order terminating Knox’s parental rights on September 20, 2022. The court found all three grounds pled in the petition supported termination, and the court further found that it was in MC’s best interest to terminate Knox’s parental rights. Knox appealed the termination order to this court.

Termination of parental rights is a two-step process requiring a determination that the parent is unfit and that termination is in the best interest of the child. *Houseman v. Ark. Dep’t of Hum. Servs.*, 2016 Ark. App. 227, 491 S.W.3d 153. The first step requires proof of one or more statutory grounds for termination; the second step, the best-interest analysis, includes consideration of the likelihood that the child will be adopted and of the potential harm caused by returning custody of the child to the parent. Ark. Code Ann. § 9-27-341(b)(3) (Supp. 2021).

Each of these requires proof by clear and convincing evidence, which is the degree of proof that will produce in the finder of fact a firm conviction regarding the allegation sought to be established. *Id.* Our review is de novo. *Dunbar v. Ark. Dep’t of Hum. Servs.*, 2016 Ark. App. 472, 503 S.W.3d 821. The appellate inquiry is whether the circuit court’s finding that

the disputed fact was proved by clear and convincing evidence is clearly erroneous. *Id.* A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. *Norton v. Ark. Dep't of Hum. Servs.*, 2017 Ark. App. 285. In resolving the clearly erroneous question, the reviewing court defers to the circuit court because of its superior opportunity to observe the parties and to judge the credibility of witnesses. *Brumley v. Ark. Dep't of Hum. Servs.*, 2015 Ark. 356.

On appeal, Knox argues that the circuit court erred by finding that it was in MC's best interest to terminate Knox's parental rights because DHS failed to diligently investigate relative placement with her aunt. She complains that DHS's failure deprived the circuit court of the necessary information to determine best interest.¹ We disagree.

Case law from this court holds that a circuit court is permitted to set termination as a goal even when a relative is available and requests custody. *Dominguez v. Ark. Dep't of Hum. Servs.*, 2020 Ark. App. 2, 592 S.W.3d 723. This is because the Juvenile Code lists permanency goals in order of preference, prioritizing a plan for termination and adoption unless the juvenile is already being cared for by a relative, the relative has made a long-term commitment to the child, and termination of parental rights is not in the child's best interest. *Id.*; *Otis v. Ark. Dep't of Hum. Servs.*, 2018 Ark. App. 28, 538 S.W.3d 870. Further, the relative preference

¹Knox does not challenge the circuit court's findings concerning the statutory grounds for termination, nor does she challenge the court's adoptability or potential-harm finding for best interest.

outlined by the legislature must be balanced with the individual facts of each case. *Dominguez*, 2020 Ark. App. 2, 592 S.W.3d 723. When the parent demonstrates stability and a reasonable hope for reunification, there is no harm in waiting a little longer before terminating parental rights; but when that stability and reasonable hope for reunification are not present; there is no reason to further delay permanency through termination and adoption. *Anderson v. Ark. Dep't of Hum. Servs.*, 2023 Ark. App. 18, 658 S.W.3d 470.

Here, the evidence showed that MC had been in foster care since he was six days old. Crockett testified that Hudson is elderly with health issues and could not care for the needs of a young child. DHS had additional concerns about her living situation. Moreover, Knox was incarcerated at the time of the termination hearing, and she had failed to communicate with DHS for most of the case, even when she was not incarcerated. Given these circumstances, we cannot say that the circuit court clearly erred when it determined that terminating Knox's parental rights was in MC's best interest. We therefore affirm the termination order.

Affirmed.

GLADWIN and THYER, JJ., agree.

Tabitha McNulty, Arkansas Commission for Parent Counsel, for appellant.

Kaylee Wedgeworth, Ark. Dep't of Human Services, Office of Chief Counsel, for appellee.

Dana McClain, attorney ad litem for minor child.